PUBLIC UNCLASSIFIED BRIEF

No. 06-36083
(Consolidated with Nos. 06-17132, 06-17137)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AL-HARAMAIN ISLAMIC FOUNDATION, INC., et al.,
Plaintiffs - Appellees,

v.

GEORGE W. BUSH, et al.,
Defendants - Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REPLY BRIEF FOR APPELLANTS

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construed, in terms of its scope, in favor of the sovereign." See *Dunn & Black*, *supra*.[5]

Plaintiffs' suggestion (for the first time in this case) that their complaint might be construed as stating a damage claim against federal officials in their individual capacities (Br. 41) does not alleviate plaintiffs' jurisdictional difficulties. This case has never been an individual capacity suit because plaintiffs never served any potential individual defendant with a complaint and summons, and it is far too late to cure that defect. See Fed. R. Civ. P. 4(i)(2)(B), (m) (requiring actual service on federal officials "sued in an individual capacity" within 120 days of complaint). Accordingly, no individual officials have appeared in, or secured counsel for, these proceedings, and the district court would have lacked personal jurisdiction to consider any claims against them. See *Butcher's Union v. SDC Inv., Inc.*, 788 F.2d 535, 538 (9th Cir. 1986); *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999).

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[5] Plaintiffs incorrectly assert that the question of sovereign immunity is not before this Court. Br. 38. "[S]overeign immunity is a jurisdictional defect that may be asserted by the parties at any time or by the court *sua sponte*." *Pit River Home & Agr. Co-op. Ass'n v. United States*, 30 F.3d 1088, 1100 (9th Cir. 1994).